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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,136	07/27/2001	Sherwin Shang	DI-5596A	3282

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EXAMINER

MULLIS, JEFFREY C

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/917,136	Applicant(s) SHANG ET AL.	
	Examiner Jeffrey C. Mullis	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Interview of 7-19.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 and 37-178 is/are pending in the application.
- 4a) Of the above claim(s) 1-21, 36 and 40-144 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-35, 37-39 and 145-178 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3-3</u> | 6) <input type="checkbox"/> Other: _____ |

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The finality of the previous Office action is hereby withdrawn. All remaining rejections and/or objections follow.

Claims 22-35 and 37-39 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants' negative limitation that their polymer blend is "non-diene containing" is not present in the specification as filed and in fact applicants' specification discloses compositions with diene containing materials and therefore applicants' negative limitation is new matter.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

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matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-35, 37-39 and 145-178 are rejected under 35 U.S.C. § 102(b) as being anticipated by Koyanagi et al. (JP 10-237267).

Koyanagi et al. disclose a composition containing 20-60% of a copolymer of propylene and 5-70% of ethylene-alphaolefin copolymer rubber. Note claim 2 of the patent. Note that components b-1 and b-2 are propylene containing polymers without olefinic unsaturation while component d is an ethylene-propylene copolymer rubber not disclosed to contain olefinic unsaturation either. See pages 10 and 11 in the translation in this regard. Component d therefore corresponds to applicants' "first component" while patentees' component "b" corresponds to applicants' "second component". Note that Run 4 in Table 1 on page 13 of the translation uses applicants' amounts. Note that the materials are molded into airbag covers having a thickness of 2-5 mm and therefore could reasonably be viewed as a monolayer film (note page 11 under item "2"). Applicants and patentees both produce films which are dynamically unvulcanized and which contain the same proportions of ethylene containing polymer and

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propylene containing polymer and therefore applicants' and patentees' characteristics reasonably appear to be the same.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

With regard to applicants' response of 2-4-04, as set out previously by the Examiner in the final Office action, the previously rejected claims are now allowable over Babrowicz since these claims now exclude materials such as EPDM of Babrowicz.

This Office action is not being made FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Mullis whose telephone number is (571) 272-1075. The examiner can normally be reached on Monday-Friday from 9:30 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on (571) 272-1078. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of

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this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-0994.

J. Mullis:cdc

July 21, 2004

Jeffrey Mullis
Primary Examiner
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A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal stroke and a small upward tick.